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August 15, 2005

VIA U. S. MAIL AND
VIA E-MAIL TO: rose.price@psc.ne.gov
Ms. Rose Price
Nebraska Public Service Commission
Natural Gas Department
1200 N Street, Suite 300
Lincoln, NE 68508

RE: Comments of Kinder Morgan Choice Gas Supply and Kinder Morgan Retail Energy Services Company regarding proposed Commission Policies for Administration of Customer Choice Programs Offered by Jurisdictional Utilities (NG-0028/PI-97)

Dear Ms. Price:

Enclosed please find the comments of Kinder Morgan Choice Gas Supply and Kinder Morgan Retail Energy Services Company regarding the above-referenced matter.

If you have any questions or concerns, please feel free to contact me.

Very truly yours,

Russell A. Westerhold
FOR THE FIRM

RAW:vk
Enclosures
391061

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) on its own motion, seeking to) investigate and adopt policies for) administration of Consumer Choice) Programs offered by Jurisdictional) Utilities for natural gas service in) Nebraska.)	Application No. NG-0028/PI-97

COMMENTS OF KINDER MORGAN CHOICE GAS SUPPLY AND KINDER MORGAN RETAIL ENERGY SERVICES COMPANY ON PROPOSED COMMISSION POLICIES FOR ADMINISTRATION OF CUSTOMER CHOICE PROGRAMS OFFERED BY JURISDICTIONAL UTILITIES

By its Order Opening Docket and Requesting Written Comments, entered on June 14, 2005, the Nebraska Public Service Commission (Commission) requested written comments on issues pertaining to customer choice programs offered by Nebraska jurisdictional utilities. Kinder Morgan, Inc. (Kinder Morgan) offers a customer choice program in Nebraska, which it calls the Choice Gas Program.

Kinder Morgan Choice Gas Supply (KMCGS) is the name under which Kinder Morgan participates as an eligible gas supplier in the base and agricultural Choice Gas Programs in Nebraska. As its operations are limited to the Choice Gas Program in Nebraska, KMCGS will limit its comments to those issues directly related to that program.

Kinder Morgan Retail Energy Services Company (KMRES) is a wholly-owned subsidiary of Kinder Morgan, and participates as an eligible gas supplier in the version of the Choice Gas Program offered by Kinder Morgan in the state of Wyoming. KMRES also acts as a marketer of gas to retail distribution customers of utilities in Colorado, Kansas, Nebraska and Wyoming. By Order entered March 29, 2005 in Application No. NG-0027, KMRES was granted a certificate by the Commission to operate as a Competitive Natural Gas Provider (CNGP) in the State of Nebraska. As KMRES currently does not participate in the Nebraska Choice Gas Program, it will limit its comments to the customer choice issues in Nebraska that would pertain to programs offered outside of Kinder Morgan's service area. KMRES adopts KMCGS' comments as they pertain to issues pertinent to the Nebraska Choice Gas Program.

KMCGS and KMRES welcome the opportunity to comment on the issues raised by the Commission in its Order; they also intend to participate in the workshop the Commission has scheduled for September 13, 2005.

I. Issues Raised by the Commission.

The Commission's Order stated the following non-exclusive list of issues that it wishes to explore in this docket:

> 1. Adoption of a standard code of conduct for jurisdictional utilities seeking to offer consumer choice programs, using Kinder Morgan, Inc.'s Code of Conduct in its Nebraska Gas Tariff, General Terms and Conditions, Item No. 38, for purposes of discussion;
>
> 2. Production of educational information by the Commission for consumers regarding consumer choice programs, such as pamphlets and website materials, using examples collected by Commission staff from other states for purposes of discussion, available for interested parties to review via Internet links on the Commission's website at www.psc.state.ne.us;
>
> 3. Annual reporting requirements for jurisdictional utilities that offer consumer choice programs and competitive natural gas providers that participate in consumer choice programs, including, but not limited to, customer take rates for each supplier, the default rate, information on range of rates and offerings available from each supplier during a consumer choice program selection period;
>
> 4. Whether and how to calculate historic cost comparisons among the suppliers for the benefit of consumers and the Commission; and
>
> 5. Auditing of consumer choice programs, including, but not limited to, auditing costs of administration of a consumer choice program by a jurisdictional utility.

The Commission's Order expressly states that the instant docket is not intended to explore whether the Commission should require jurisdictional utilities to offer customer choice programs. KMCGS and KMRES have concluded that the Commission lacks the authority to mandate customer choice programs. For the benefit of jurisdictional customers, however, KMRES is of the opinion that the Commission should take a role in encouraging jurisdictional utilities and non-jurisdictional utilities operating in Nebraska to offer at least one unbundling program of the sort envisioned by Section 66-1851 of the State Natural Gas Regulation Act. The initial parameters of such programs are best left to the informed judgment of the utility offering the program.

II. Issue-By-Issue Comments.

Issue 1: Standard Code of Conduct.

The Commission's Order sets this issue forth as follows:

> Adoption of a standard code of conduct for jurisdictional utilities seeking to offer consumer choice programs, using Kinder Morgan, Inc.'s Code of Conduct in its Nebraska Gas Tariff, General Terms and Conditions, Item No. 38, for purposes of discussion.

The substance of Section 38 of the General Terms and Conditions of Kinder Morgan's Nebraska Gas Tariff was developed during the first five years of the Nebraska Choice Gas Program, when utility regulation largely did not address terms and conditions of service. Lacking the normal regulatory oversight, Kinder Morgan and the gas suppliers participating in the programs collaborated to develop rules governing (a) Kinder Morgan's multiple roles as program administrator, system operator and participating gas supplier, and (b) the role of all participating gas suppliers, currently including KMCGS. These rules are specific to Kinder Morgan's Nebraska programs, and address the concerns of gas suppliers actually participating in Kinder Morgan's programs.

The principal problem with the substance of Issue 1 is that rules developed for Kinder Morgan's programs may not translate well to programs implemented by other jurisdictional utilities. Utilities differ in their customer bases. Some serve largely urban areas, while others, such as Kinder Morgan, serve mostly small rural communities. Utilities also differ in their infrastructure. Some utilities have upstream pipeline capacity and/or storage facilities while others may purchase gas directly at the inlet of the distribution system and have no upstream assets. Where the utility has upstream assets, operational discretion over these assets may or may not be released to CNGPs. Adoption of a code of conduct as Commission policy or through a subsequent rulemaking proceeding therefore may dissuade other jurisdictional utilities from implementing customer choice and other unbundling programs as permitted by Section 66-1851 of the Regulation Act. Similarly, such policies or rules may dissuade competitive natural gas providers from participating in such programs. KMCGS and KMRES believe that the Commission must avoid any action that may diminish the success of customer choice and other retail unbundling programs. The better approach is to act on a program-by-program basis to develop program-specific codes of conduct tailored to the specific needs of each program. KMCGS and KMRES therefore recommend that the Commission for the time being should reject the idea of developing a uniform code of conduct that would govern all customer choice and other retail unbundling programs.

Program-specific rules, such as the Choice Gas-specific code of conduct embodied in Section 38 of Kinder Morgan's General Terms and Conditions of Service, also have the advantage of flexibility. Once codified in a formal rule, the ability to depart from the rule, even where good cause for doing so is shown, is difficult. KMCGS and KMRES urge the Commission to proceed cautiously in this docket to limit the adopted policies or rules to solely those policies and rules that are proper subjects for policies and rules. The vast majority of rules and outcomes are more appropriately established in utility tariffs and case-by-case decisions entered by the Commission tailored to the specific facts of the case before it.

Issue 2: Production of Educational Material.

The Commission's Order sets this issue forth as follows:

> Production of educational information by the Commission for consumers regarding consumer choice programs, such as pamphlets and website materials, using examples collected by Commission staff from other states for purposes of discussion, available for interested parties to review via Internet links on the Commission's website at www.psc.state.ne.us.

KMCGS and KMRES generally support the willingness of the Commission to assist in the production of educational materials regarding applicable customer choice or other unbundling programs offered by jurisdictional utilities. The Commission would have to ensure that any educational materials that it disseminates do not act to disrupt the levelness of the playing field. The Commission should also act to ensure that the process of developing and disseminating educational material does not materially-impact the cost of participation in a customer choice or other unbundling program, or negatively-impact customer's perceptions of the benefits of participation in such programs. KMCGS and KMRES believe that the workshop can be an effective means of addressing ways in which customer education can be improved to the benefit of all participants in customer choice programs.

Issue 3: Annual Reporting Requirements.

The Commission's Order sets this issue forth as follows:

> Annual reporting requirements for jurisdictional utilities that offer consumer choice programs and competitive natural gas providers that participate in consumer choice programs, including, but not limited to, customer take rates for each supplier, the default rate, information on range of rates and offerings available from each supplier during a consumer choice program selection period.

KMCGS and KMRES are very concerned that an annual reporting requirement imposed on entities that are not jurisdictional utilities could have the effect of discouraging such entities from participating in a utility's customer choice or other unbundling program. While CNGPs are subject to some Commission oversight, they are not subject to the pervasive oversight reserved for jurisdictional utilities and more than likely are content with that status. Imposing an annual reporting requirement on such entities might tip the scales for them in favor of steering clear of involvement in such programs. The Choice Gas Program operates well with three or four gas suppliers participating in a given year. Greater participation in the program by suppliers can only make the program more robust. KMCGS and KMRES again urge the Commission to avoid actions that might diminish the willingness of gas suppliers to participate in the program.

An annual reporting requirement imposed on non-utility participants also might cause economic difficulty for some of them. Some of the gas suppliers participating in the Choice Gas Program have more financial wherewithal than others. These suppliers might be able to absorb or pass-on the additional costs associated with the preparation of annual reports such as that being considered by the Commission. However, some of the participating gas suppliers are smaller firms that presumably operate on relatively tight budgets. Extra administrative costs imposed on them may cause them to consider whether they can afford to continue their participation in the Choice Gas Program. The Commission's role should be to make customer choice programs more robust, not to take actions that might discourage gas suppliers from participating in such programs.

A final concern with the proposed annual reporting requirement is the lack of clarity regarding the benefits to be derived from the information referenced for inclusion in the annual reports. For instance, gas supplier pricing information, including the gas supplier's default price, are available to all Choice Gas customers during the balloting period and assists customers in choosing their gas supplier for the upcoming program year. KMCGS and KMRES are unable to discern a purpose for after-the-fact reporting of that information.

Having stated their concerns, KMCGS and KMRES stand ready to assist the Commission in identifying its information needs at the upcoming workshop or in another forum chosen by the Commission.

Issue 4: Historic Cost Comparisons.

The Commission's Order sets this issue forth as follows:

> Whether and how to calculate historic cost comparisons among the suppliers for the benefit of consumers and the Commission.

The principal concern that KMCGS and KMRES have with this proposal is in discerning the "benefit" that will accrue to consumers or the Commission from the dissemination of historic cost comparison information.

Gas suppliers participating in the Choice Gas Program offer a wide range of gas supply options and prices, ranging from fixed monthly pricing options, to market-based floating price options, to prices individually-negotiated by customer and supplier. A gas supplier's pricing options fluctuate during the two-week balloting period as wholesale natural gas prices fluctuate. Once the balloting period has concluded and each customer has selected its gas supplier, the customer and the gas supplier are permitted to agree mutually to changes in the pricing of the gas supply. The fluidity of the pricing process optimizes the ability of each customer to receive a reasonable price for the gas commodity it will purchase.

If the purpose of this proposed requirement is to identify the gas supplier with the lowest commodity rate for a prior period, the prevalence of multiple service offerings and associated prices, some of which are negotiated individually, is likely to muddle the comparison, thereby diminishing any value that the comparison otherwise might have had. Moreover, any price comparison would have to evaluate fairly the benefits of each service offering. For instance, one of the service offerings made by KMCGS is a fixed monthly bill, which Kinder Morgan calls its Winterguard® rate. This rate is based on the customer's past consumption habits instead of actual annual gas consumption for the current program year; the monthly bill amount does not change regardless of prevailing weather or changes in natural gas prices. Many Nebraska customers prefer the certainty afforded them by the Winterguard® rate, even if it means that they may end up paying a higher overall rate in some years. Any cost comparison, to be fair, would have to take into account the tangible and intangible benefits associated with the varying gas supply and price options. Such comparisons probably would be so subjective as to render them virtually valueless.

Another factor of relevance to this issue is that past performance is no guarantee of future performance. Just because one gas supplier, on a composite basis, is calculated to have had the lowest overall rates during a particular program year, this is no guarantee that the same gas supplier will have the lowest overall rates during an upcoming program year. For instance, a gas supplier may make some incautious decisions regarding gas supply procurement in order to be able to offer the lowest overall rates to customers. However, if that gas supplier suffers a financial detriment as a result of those decisions, it is unlikely that the gas supplier will repeat those decisions and its future price offerings will reflect the change in its approach.

The comparative quality of the price options offered by individual gas suppliers also will be impacted greatly by the market conditions that exist during the program year. In a rising cost environment, a customer is likely to be happy with a fixed-rate pricing option and unhappy with a floating market-rate price option. Conversely, in a decreasing cost environment, the customer likely will be more satisfied with a floating market-rate price option. Many customers are concerned with the need for certainty and either choose a fixed-rate pricing option, which can still lead to widely varying overall gas bills based on consumption, or a fixed-bill pricing option which seeks to provide the customer with a fixed annual bill which is calculated based on the customer's past consumption history. The point of this discussion is that the Commission's focus should not be on trying to determine which gas supplier arguably had the lowest overall commodity prices in a past period, but rather that customers are being offered a sufficient number of pricing options and that they are educated sufficiently to be able to choose the pricing option that best fits their needs.

Finally, the preparation and publication of price comparisons easily could be interpreted and broadcast by the "winning" gas supplier as an endorsement of the gas supplier with the lowest overall rates as calculated by the Commission. Such an appearance could impact negatively the operation of the Choice Gas Program and other customer choice or retail unbundling programs, and must be avoided.

While an interesting concept, KMCGS and KMRES believe that any attempt to prepare and publish comparative price data will generate so much controversy as to negate any possible benefit that otherwise might flow from such data. The workshop scheduled by the Commission should be a valuable forum for further exploration of this issue.

Issue 5: Auditing of Programs.

The Commission's Order sets this issue forth as follows:

> Auditing of consumer choice programs, including, but not limited to, auditing costs of administration of a consumer choice program by a jurisdictional utility.

The administrator under the Choice Gas Program, Kinder Morgan, provides substantial data to the participating gas suppliers on issues such as the appropriate level of the Supplier Fee imposed by Kinder Morgan on participating gas suppliers, and the appropriate level, mix and costs of upstream pipeline capacity released to gas suppliers by Kinder Morgan. Under these circumstances, and especially in the absence of any allegations of abuse over the seven-plus years of operation under the Choice Gas Program, a requirement for periodic audits of the program administrator might be of limited value. The only certainty of the audit requirement would be an increase in administrative costs that Kinder Morgan would pass on either to ratepayers or the gas suppliers.

III. Conclusion.

KMCGS and KMRES believe that the appropriate role for the Commission to fill with respect to customer choice and other retail unbundling programs is to ensure that the participants operate on a level playing field and that the programs are as robust as possible. An emphasis historically with respect to the Choice Gas Program has been to ensure that Kinder Morgan is not favoring itself or an affiliate, to the detriment of consumers or other participants. This emphasis has been appropriate; however, some investigation also is appropriate to ensure that the playing field isn't "leveled" to the detriment of the jurisdictional utility and its participating affiliates. For instance, while Kinder Morgan is required to separately account for the activities of shared employees, and limits are placed on the acceptable actions of some Kinder Morgan personnel, a competing gas supplier regularly uses personnel employed by municipalities that have a financial interest in the supplier, at no cost to the supplier, to market the services of the supplier to consumers within the municipality. Level playing fields require development and consistent application to all of properly tailored rules. KMCGS and KMRES urge the Commission to ensure that any policies or rules developed through this docket assure a level playing field for all participants, including KMCGS and KMRES, and do not unfairly skew the market in favor of participants not affiliated with Kinder Morgan.

DATED this 15th day of August, 2005.

RESPECTFULLY SUBMITTED,

KINDER MORGAN CHOICE GAS SUPPLY

KINDER MORGAN RETAIL ENERGY SERVICES COMPANY

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